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the time from which interest is claimed, no plea in bar shall be received unless accompanied by an affidavit, and that, if such plea and affidavit be not filed by the defendant, judgment shall be for plaintiff for the amount claimed in the affidavit filed with the declaration. *Held*, that where plaintiff filed a declaration in assumpsit accompanied by an affidavit, as required by such section, and on the first day of the succeeding term, defendant filed two pleas, neither of which was verified, and the case was continued, it was error for the court at the succeeding term to deny plaintiff's motion to strike out the pleas and to enter judgment for plaintiff for the amount stated in his affidavit, plaintiff not having waived his rights under the statute.

2. Where plaintiff in assumpsit filed an affidavit with his declaration, as authorized by Code 1887, sec. 3286, the misprision of the clerk in placing the cause on the issue docket for a writ of inquiry on defendant filing pleas unaccompanied by affidavit did not constitute a waiver of plaintiff's right to judgment on his affidavit for the amount of the account sued on.

3. The mere taking of depositions before a case had been set for hearing did not constitute a waiver of plaintiff's right to judgment on the pleadings by reason of the fact that the pleas filed were defective for want of an affidavit required by Code 1887, sec. 3286, an affidavit having been filed with the declaration.

TEAWALT v. RAMEY'S EX'X et al.

Sept. 22, 1904.

[48 S. E. 505.]

DECEDENT'S ESTATES—CLAIM FOR NURSING—VALIDITY—ACCOUNTING—
FINDING.

1. Where, in a proceeding to establish a claim against a decedent's estate, it appeared that accounts between claimant and decedent extended through a period of many years, and comprised numerous items and transactions; that no regular books were kept; that the making of a satisfactory statement was exceedingly difficult; and that the evidence in relation thereto was contradictory—such facts, of themselves, do not warrant a finding that no decree can be rendered in favor of either party.

2. Where claimant, who long had been intimately associated with decedent, at one time being in his employment as a laborer, and then as renter of his land for many years, in the last sickness of deceased went to his house unasked and unsolicited, even though gratefully received, as his friendship with deceased warranted, and entered the sick chamber to nurse deceased as a friend, while deceased was surrounded by his family and other friends who were anxious to serve him, and no stipulation was made that the service of claimant should be paid for, no promise will be implied.